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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Billed Party Preference for)
0+ Calls) CC Docket No. 92-77
)
CompTel's Proposed Rate)
Ceiling on Operator Service)
Calls)

and

Petition for Rulemaking of)
National Association of)
Attorneys General Regarding) RM-8606
Additional Disclosures by)
Some Operator Service)
Providers)

AT&T's Reply Comments

AT&T Corp. ("AT&T") hereby replies to the April 12, 1995 comments regarding CompTel's proposed rate ceiling for operator services calls and the National Association of Attorneys General's ("NAAG's") proposal to adopt additional disclosure requirements for some Operator Services Providers ("OSPs").¹

**I. Billed Party Preference Is Not Viable Whether Or Not
The Commission Adopts Either Of The Pending Proposals.**

CompTel presents its rate ceiling proposal as an alternative to the Billed Party Preference ("BPP") concept that has been under review for nearly a decade. The

¹ A list of commenters and the abbreviations used to refer to each is appended as Attachment 1.

comments, however, together with the full record in CC Docket No. 92-77, confirm that BPP is neither viable nor necessary to solve perceived problems in the operator services business, whether or not the pending proposals are adopted.² Commenters as disparate as APCC (p. 3), CNS (p. 2), Frontier (p. 1), NYNEX (p. 2) and NTCA (p. 1) all acknowledge that BPP is an idea whose time, if ever, has passed.³ Even Pacific (pp. 4-5), a supporter of BPP, notes that "the original design of BPP is very costly" and that other actions could "mitigate" the need for BPP. The few carriers who continue to support BPP⁴ offer no new information to rebut the overriding reality that costs far outweigh any benefits in the current BPP proposal.⁵

II. The CompTel Proposal Is Both Unnecessary And Flawed.

Many commenters also agree with AT&T (pp. 2-4) that the CompTel proposal is unnecessary, flawed, or both. For example, some commenters object to the benchmarks proposed by CompTel because they have no relationship to

² See AT&T, p. 2; U.S. Osiris, p. 7.

³ See also CompTel, pp. 2-4; Opticom, p. 2; Teltrust, p. 7; USLD, p. 2; U.S. Osiris, p. 1.

⁴ Ameritech, p. 1; MCI, p. 5; Southwestern, p. 9; Sprint, p. 6. MessagePhone (p. 7), which continues to use this proceeding as a marketing tool, attempts to show reduced costs based upon widespread adoption of its own technology.

⁵ See AT&T's Reply Comments, CC Docket No. 92-77, dated September 14, 1994 ("AT&T's 92-77 Reply"), pp. 18-27.

costs⁶ or to a reasonable range of competitive prices in the marketplace.⁷ Others simply assert that the benchmarks CompTel proposes are too high.⁸ Several commenters note that the structure of the CompTel proposal is impractical, because it is inconsistent with the way operator services calls are typically priced.⁹ Others note that the proposal does not permit the benchmarks to be adjusted over time as competition and market conditions change.¹⁰

More fundamentally, some commenters also concur with AT&T (pp. 3-4) that CompTel's proposal is unnecessary. Opticom (p. 5) notes that the Commission has issued three separate reports to Congress in which it stated that the TOCSIA rules were securing just and reasonable rates and fair practices for consumers.¹¹ Opticom (p. 10) therefore urges that the Commission use its numerous existing enforcement mechanisms "to address violations by individual

⁶ NAAG, p. 3; SWBT, p. 5.

⁷ AT&T, p. 4; Opticom, p. 12.

⁸ Colorado PUC, p. 12; NAAG, p. 3; Ameritech, p. 2; Pacific, p. 2; Sprint, p. 7. MCI (p. 4) and U.S. Osiris (p. 9) also predict that any rate ceiling would likely become a "rate floor" and generate rate increases by some carriers.

⁹ OSC, p. 5; U.S. Osiris, p. 8. See Pacific, p. 2.

¹⁰ Opticom, p. 12; OSC, p. 4; AT&T, p. 4.

¹¹ See also U.S. Osiris, p. 12.

carriers."¹² In addition, Opticom (id.) reasonably suggests that the Commission's enforcement actions could be coordinated with activities of state PUCs to assure compliance with federal and state rules that require the unblocking of access codes.

AT&T agrees that vigorous enforcement of the existing unblocking and signage rules, together with carriers' ongoing access code marketing campaigns, will assure that all consumers can obtain access to their desired carrier and to appropriate rate information wherever they are. Moreover, consumers' increasing use of access codes shows that they are rapidly becoming educated about the need to take appropriate actions to reach their carrier of choice.¹³ Thus, Opticom (id.) is correct that "[t]argeted enforcement actions by the Commission may be as viable a solution" as CompTel's proposal.¹⁴

¹² See also U.S. Osiris, p. 5 ("[t]he FCC has within its power today the ability to determine whether rates are just and reasonable. If the Commission were to exercise that authority over carriers with a history of charging extraordinarily high rates, incidences of over charging would be greatly diminished"); USTA, p. 2.

¹³ See AT&T's 92-77 Reply, p. 15 ("[c]arriers' efforts to encourage consumers to dial access codes have been much more successful than anticipated by the FNPRM"); U.S. Osiris, p. 4 ("[c]onsumers have alternatives and are exercising freedom of choice in large numbers. No customer today is forced to pay an exorbitant rate for an operator assisted call unless the consumer chooses not to exercise that choice").

¹⁴ See also U.S. Osiris, pp. 4-5 ("[e]nforcement of posting [requirements] by all aggregators" would greatly reduce consumer complaints"). Indeed, all of the operator

In addition, a number of commenters believe that the CompTel proposal would be "costly and burdensome to administer."¹⁵ Some also point to potential legal or regulatory impediments that could be encountered in implementing or enforcing the CompTel proposal.¹⁶ Indeed, MCI (p. 3) states that adopting rate ceilings would "be contrary to the Commission's policy of reducing regulation by relying upon marketplace forces."¹⁷

The comments also raise serious doubt about whether the proposed ceilings could work. All of the small

(footnote continued from previous page)

service issues raised by BPP proponents could be substantially ameliorated by active Commission enforcement of its TOCSIA rules. Increased actions to enforce appropriate and necessary existing rules, such as the recent Notice of Apparent Liability issued to Oncor, FCC 95-127, March 29, 1995, would likely produce a quicker and more salutary result for consumers than continued debate (and possible litigation) over the effects of additional regulatory rules.

¹⁵ MCI, p. 3. See also NAAG, p. 7; Colorado PUC, pp. 6-7; CNS, p. 3; MessagePhone, p. 5; Sprint, p. 11; U.S. Osiris. p. 10.

¹⁶ Opticom, pp. 7, 11-13; CNS, pp. 3-4. See also Colorado PUC, p. 5 (AOSs and IPPs can muster "a seemingly endless supply of financial resources" in order to "litigate, to lobby legislators, and to delay corrective measures").

¹⁷ Oncor's complaint (p. 5) that some OSPs are losing traffic because of "dial around due to AT&T's ubiquitous advertising" merely proves that the market is functioning competitively. AT&T (and other OSPs) could not convince customers to go to the extra effort of using access codes unless they had something attractive to offer. Oncor's competitive response to such consumer action should be to lower its prices, increase its efficiencies or offer consumers value for which they are willing to pay.

LECs which commented question -- or flatly oppose -- their involvement in monitoring OSP rates.¹⁸ In addition, many OSPs do much of their billing through third parties who are not LECs and would not be subject to the proposed monitoring requirements.¹⁹

If the Commission nevertheless decides to implement some type of rate ceiling proposal, the comments show that it should apply several basic principles to the benchmarking process. First, the benchmarks should not be based upon the rates of any specific carrier, "dominant" or otherwise.²⁰ Rather, as Colorado PUC (pp. 6, 10) suggests, benchmarks should be based upon an average of rates for a "market basket" of carriers. However, in order to account for a broad variety of carrier structures and costs, the "basket" should not be limited only to large established

¹⁸ NCTA, pp. 3-4 ("[t]he proposed monitoring procedures will impose on small LECs a burden which is not inconsequential and one which they do not desire to assume"); USTA, pp. 2-3. See also SWBT, p. 6 ("LECs should not be required to monitor and enforce rate compliance by OSPs"); Sprint, p. 8.

¹⁹ MessagePhone, p. 5. See Colorado PUC, p. 7.

²⁰ AT&T, p. 5; CompTel, p. 7; APCC, p. 9, 13 (using the dominant carrier's rates as a standard is arbitrary and unfair); OSC, p. 8 (using dominant carrier rates "is at best arbitrary and [at] worst dangerous market interference"); Teltrust, p. 5. Use of the "dominant" classification is arbitrary and meaningless for other reasons as well. See letter from Gerald Salemmme, AT&T, to William F. Caton, Federal Communications Commission, CC Docket No. 79-252, dated April 24, 1995.

OSPs; rather, it should include a representative sample of all OSPs in the marketplace.

Second, as OSC (pp. 5-6) notes, the benchmarks established should conform to the general pricing structure in the industry, i.e., charges for call initiation (including all service charges and location specific charges and the use of special operator services) and per minute charges for the time spent on a call.²¹

Third, any rate ceiling mechanism should allow the rate benchmarks to change over time as the market changes.²² In order to preserve administrative efficiencies, the changes should be made on specific dates. However, instead of the periodic notice and review process suggested by Ameritech (p. 2), the Commission's rules should establish a mechanism to allow the Common Carrier Bureau automatically to adjust the ceilings on an annual (or semi-annual) basis, similar to the method used to determine OSPs' obligations to pay dial-around compensation.²³

²¹ See also Pacific, p. 2.

²² See OSC, p. 13.

²³ See 47 C.F.R. § 64.1301. If the Commission adopts a rate ceiling definition that is simple enough, the calculations could be performed by a third party such as CompTel, based upon then-current tariff information provided by the OSPs which are in the representative "market basket." In all events, the "ceilings" should not operate as a rate prescription. Individual OSPs should be allowed to charge rates that exceed the ceiling, provided that the rates can be shown to be just and reasonable.

Finally, contrary to CompTel's suggestion (p. 5), the rate ceilings should not apply to all OSPs. The problem of excessive rates has never been associated with OSPs who provide a full range of operator services to all customers from all telephones. Such carriers face heavy competition in every aspect of their business. Thus, their prices for calls from aggregator telephones reflect the competition they face for operator services calls from all telephones, including home and business phones. These carriers should not be penalized with additional regulatory burdens because of the actions of other carriers who confine their business to aggregator telephones. Any additional regulatory requirements should be narrowly applied to the carriers whose behavior necessitates the new rules.

III. The NAAG Proposal Is Unnecessary.

Many commenters stated that the NAAG proposal to require additional notice on certain operator services calls is unnecessary and could well be counterproductive. First, Bell Atlantic (pp. 1-2) and others noted that the proposal relies on the cooperation of the same "bad actors" whose conduct necessitates the rule.²⁴ Second, the proposed message, which refers to a customer's "regular" carrier and directs customers to dial the general 800 directory

²⁴ See also MCI, p. 6; MessagePhone, p. 3; SWBT, pp 3-4; Sprint, p. 4.

assistance number, will likely confuse consumers.²⁵ Moreover, use of the proposed message would slow call processing,²⁶ and would not have any direct impact on OSP rates.²⁷ In addition, the proposal is based upon rate comparisons with the "dominant" carrier. As demonstrated above (pp. 6-7), all such comparisons are inappropriate. Thus, as AT&T's Comments suggested (p. 5), the Commission can better use its limited resources to enforce its existing safeguards to ensure that signage and rate information requirements are complied with and that all consumers can access the carrier of their choice from any aggregator telephone.²⁸

CONCLUSION

The CompTel and NAAG proposals are unnecessary additional regulatory responses to matters the Commission can best address using its existing rules and powers. If,

²⁵ APCC, p. 14; Ameritech, p. 2; CompTel, p. 11; NYNEX, p. 3; OSC, p. 7; SWBT, p. 4.

²⁶ OSC, p. 7.

²⁷ CompTel, p. 12.

²⁸ Some commenters, e.g., CNS (pp. 4-5), Oncor (p. 8), Sprint (p. 6) and Teltrust (pp. 7-8), attempt to resurrect old cries about AT&T's "remonopolization" of operator services and complaints about AT&T's marketing practices. These claims are baseless. AT&T's share of the operator services business is completely in line with its overall share of switched services, AT&T no longer markets its cards as "0+" vehicles, and consumers' increasing use of access codes shows that unblocking of all aggregator phones is the key to establishing a fully competitive marketplace for operator services.

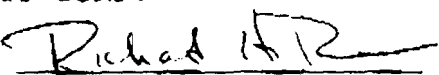
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however, the Commission decides to add extra layers of regulation in the form of a "rate ceiling," the new rules should not be tied to the activities of a single OSP, they should allow for changes over time and minimize administrative costs, and they should only apply to the carriers whose actions have created the need for such rules.

Respectfully submitted,

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One Call Communications,
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Colorado Public Utilities
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Operator Service Company
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Competitive
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Association ("CompTel")

Pacific Bell/Nevada Bell
("Pacific")

Florida Public Service
Commission

Southwestern Bell
Telephone Co. "SWBT")

Frontier Communications
International, Inc.
("Frontier")

Sprint Corporation

Gateway Technologies, Inc.

Teltrust, Inc.

MCI Telecommunications
Corp. ("MCI")

U.S. Long Distance, Inc.
("USLD")

MessagePhone, Inc.

US Osiris Corporation

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CERTIFICATE OF SERVICE

I, Ann Abrahamson, hereby certify that a true copy of the foregoing Reply Comments of AT&T was served this 27th day of April, 1995 by first class mail, postage prepaid, to the parties listed on the attached service list.


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